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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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09/551,399

04/17/2000

Christopher J. Chase

03493.86913

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08/17/2006

Mr. S. H. Dworetsky
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EXAMINER

HOM, SHICK C

ART UNIT

PAPER NUMBER

2616

DATE MAILED: 08/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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| | | | | |
|------------------------------|------------------------|--|---------------------|--|
| Office Action Summary | Application No. | | Applicant(s) | |
| | 09/551,399 | | CHASE ET AL. | |
| | Examiner | | Art Unit | |
| | Shick C. Hom | | 2616 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/6/06 & 7/1/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32, 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32, 34 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 32 and 34-35 have been considered but are moot in view of the new ground(s) of rejection.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 6/6/06 has been entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at

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the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 32 and 34-35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aida (6,212,163) in view of Lee et al. (6,023,470).

Regarding claim 32:

Aida discloses the frame relay switch is responsive to a plurality of different service categories and configured to determine a quality of service of the plurality of different service categories (see col. 3 line 55 to col. 4 line 2 and the

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abstract which recite the ATM network, i.e. frame relay switch, handling a plurality of service categories which shares the transmission paths whereby responsive upon receiving a connection request for a call belonging to one of the plurality of service categories, evaluates the quality of service of the service category requested by the connection request and evaluates a QoS of each other service category clearly anticipate the frame relay switch responsive to different service categories to determine a QoS of the service categories as claimed).

Aida discloses all the subject matter of the claimed invention with the exception of the frame relay switch being coupled to a customer premises equipment with at least one permanent virtual circuit; receiving a plurality of frame relay data packets, and translating user data within at least one of the frame relay data packets into a fast packet address; and the data being layer 4 data as recited in claim 32; wherein the frame relay switch is responsive to Internet protocol (IP) data within the frame relay data packets as in claim 34; and wherein the frame relay switch is responsive to layer 3 Internet protocol (IP) data as in claim 35.

Lee et al. from the same or similar fields of endeavor teach that it is known to provide the frame relay switch being

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coupled to a customer premises equipment with at least one permanent virtual circuit (see col. 10 lines 51-62 which recite the use of permanent virtual circuits to connect SmartPOP, i.e. customer premises, equipments); receiving a plurality of frame relay data packets, and translating user data within at least one of the frame relay data packets into a fast packet address (see col. 60 line 62 to col. 61 line 3 which recite means for physical and link-layer protocol conversion of the frames to a packet mode format compatible with fast-packet data networks); and the data being layer 4 data as recited; wherein the frame relay switch is responsive to Internet protocol (IP) data within the frame relay data packets; and wherein the frame relay switch is responsive to layer 3 Internet protocol (IP) data (see col. 48 lines 56-64 and col. 50 lines 18-30 which recite the use of OSI stack layer protocols and the internet protocol IP clearly anticipate the switch being responsive to OSI layers 3, 4, and IP data). Thus, it would have been obvious to the person having ordinary skill in the art at the time the invention was made to provide the frame relay switch being coupled to a customer premises equipment with at least one permanent virtual circuit; receiving a plurality of frame relay data packets, and translating user data within at least one of the frame relay data packets into a fast packet address; and the data being

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layer 4 data; wherein the frame relay switch is responsive to Internet protocol (IP) data within the frame relay data packets; and wherein the frame relay switch is responsive to layer 3 Internet protocol (IP) data as taught by Lee et al. in the communications network of Aida. The frame relay switch being coupled to a customer premises equipment with at least one permanent virtual circuit; receiving a plurality of frame relay data packets, and translating user data within at least one of the frame relay data packets into a fast packet address; and the data being layer 4 data; wherein the frame relay switch is responsive to Internet protocol (IP) data within the frame relay data packets; and wherein the frame relay switch is responsive to layer 3 Internet protocol (IP) data can be implemented by connecting the means for translating user data into fast packet address and using OSI protocol including the IP protocol of Lee et al. in the network of Aida. The motivations for connecting the means for translating user data into fast packet address and use of OSI protocol including the IP protocol as taught by Lee et al. in the communication network of Aida being that it provides the desirable added feature of connection to the Internet, the efficiency of using standard OSI and IP protocols, and desirable added feature of translation to a standard protocol at the frame relay switch of Aida.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kalampoukas et al. disclose a congestion control system and method for packet switched networks providing max-min fairness. Kilkki et al. disclose timer-based traffic measurement system and method for nominal bit rate (NBR) service.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shick C. Hom whose telephone number is 571-272-3173. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Seema Rao can be reached on 571-272-3174. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SH

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RICKY Q. NGO
SUPERVISORY PATENT EXAMINER